

May 2004 ARRC Meeting

Summary of Issues

The June, 2004 meeting of the Administrative Rules Review Committee will be on Tuesday, June 8th 2004 in Statehouse Room #116. The July meeting will be held on THURSDAY, July 8th and possibly Friday, July 9th, 2004, in room #116.

Special review for June meeting. The committee will review its rules of procedure.

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ADMINISTRATIVE SERVICES DEPARTMENT, Service contracts, 4/28/04 IAB, ARC 3303B, NOTICE.

BACKGROUND: For a number of years the department has had detailed rules regulating service contracting by state agencies; the department now offers an update to these provisions.

COMMENTARY: The existing rules specifically state that "[a] service contract should be competitively selected on a regular basis so that a department or establishment obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology."

The department has already established significant regulations and safeguards relating to service contracting by state agencies: the contracts must have specific beginning and ending dates; and service contracts cannot extend past six years, including renewals, unless the department grants a waiver. With very limited exceptions state agencies must use a competitive selection process to acquire services from private entities when the estimated annual value of the service contract is \$5,000 or more or when the estimated aggregate value of a multiyear service contract is \$15,000 or more. Sole source procurement can be used only when it is clearly necessary and justifiable.

ACTION: NO ACTION.

ADMINISTRATIVE SERVICES DEPARTMENT, Surplus state property, 4/28/04 IAB, ARC 3315B, NOTICE.

BACKGROUND: As set out in Code §8A.324 the director of the department may dispose of personal property by two means: first, property that is "unfit or unnecessary" may be sold and the proceeds deposited in the general fund. Second, if the property has little or no value, the director may simply dispose of the property by sale, trade-in, or recycling. The department proposes to set out the entire process in rule.

COMMENTARY: The department and its predecessor, the General Services Department, has always had control over the disposal of surplus property. Within a 25 mile radius of Des Moines, prison industries personnel actually picks up surplus property and prepares it for sale at the Des Moines warehouse, or for possible auction. Committee members noted that state auctions and the location of the warehouse, tended to limit public access to central Iowa; members questioned whether an internet auction, similar to E-bay auctions might be feasible. Department representatives responded that most of the surplus (e.g.: older computers, where collection and sales actually lost money) had very little value and could not be successfully auctioned. There was also discussion about the disposal of state property outside of the 25 mile radius, where it was not feasible for the department to collect anything but the most valuable property. In these cases the local agency must dispose of the property, subject to Iowa's laws relating to the misuse of state

property. Future guidelines will be needed to regulate the disposal of state property in remote locations. It was suggested that the department consult with the ethics board on this matter.

ACTION: NO ACTION.

COLLEGE AID COMMISSION, Tuition grants: in-person attendance, 4/28/04 IAB, ARC 3323B, NOTICE.

BACKGROUND: Established in Iowa Code Chapter 261, the Iowa Tuition Grant Program provides grants to Iowa residents attending an accredited Iowa private institution.

COMMENTARY: The proposed amendment establishes a new eligibility limitation for the tuition grant program: at least 50 percent of the hours taken must be in a classroom setting. Commission representatives state that the growth of remote learning (internet) opportunities have made it more difficult to ensure that the student is actually enrolled in an Iowa college or university. The 50 percent requirement is an attempt to ensure that the school has an Iowa campus and program. Moreover, the growth of on-line education has greatly increased demands for tuition assistance; the 50 percent requirement is also intended to reduce demands for the limited student aid which is available.

Committee members expressed concern that this proposal would have an adverse impact on working parents who are attempting to further their education while managing jobs and family demands. Members agreed that tuition grants needed to be kept under control, but questioned whether limiting on-line learning was the proper approach, and contended there were a number of other options to conserve scarce funding.

ACTION: No action, further review when this provision is adopted in final form.

ECONOMIC DEVELOPMENT DEPARTMENT, Loan and credit guarantee program, 4/14/04 IAB, ARC 3284B, ADOPTED.

BACKGROUND: This new fund will provide loan guarantees for small and medium sized businesses employing less than 200 people. It was created in 2003 Acts, First Extraordinary Session, Chapter 1, §101. The legislature has appropriated some \$25 million over the next four years to fund this program; money in this program does not revert.

COMMENTARY: At issue in this filing was the application and loan fees. Under the rules the application fee is not refundable and will be set annually, up to \$1,000. Committee members noted that "fees" were not exempted from the rulemaking process and the department was urged to either put the fee in rule or establish a sliding scale which varied the fee according to the amount of the loan. Upon approval of the loan an additional authorization fee is also charged, amounting to 2.5% of the amount of funds to be guaranteed.

Some committee members called the fees excessive and expressed concern that the level of the fees would discourage participation by smaller businesses. Members questioned whether the loan and guarantee board actually understood the impact these fees would have on applications. Department representatives responded that fees were necessary to provide administrative support for the program.

ACTION: NO ACTION.

EDUCATIONAL EXAMINERS BOARD, Ethics and professional responsibility, 4/28/04 IAB, ARC 3311B/3312B, NOTICE.

BACKGROUND: The board proposes a re-write of its existing rules relating to licensee ethics and proposes new provisions specifying the rights and responsibilities of licensees. These proposals were initially placed under notice in January; the proposals were not reviewed by the committee at that time. Following public comment they are now being re-noticed.

COMMENTARY: The proposal establishes eight general standards, each standard is then set out in detail. The first standard deals with the most serious ethical or professional lapses: criminal convictions, sexual conduct with a student, and child or adult abuse; this section also includes fraud in procuring the professional license. Certain criminal convictions constitute automatic disqualification, they include violent felonies and sexual offenses involving children. Other criminal convictions, and child abuse determinations, will be evaluated on a case-by-case basis using criteria established in statute.

A second and related proposal sets out licensee rights and responsibilities. The rights proposed will provide at least a partial defense against professional complaints and against improper demands by administrators. The enumerated responsibilities can be used as disciplinary or other proceedings related to the actions or obligations of a licensee.

ACTION: NO ACTION.

ELDER AFFAIRS DEPARTMENT, Assisted living programs, 4/14/04 IAB, ARC 3299B, ADOPTED.

BACKGROUND: The regulation of assisted living programs has been contentious for several years; the committee reviewed provisions related to assisted living programs as early as 2002, and the legislature considered these issues as well. In 2003 the legislature enacted 2003 Acts, Chapter 166, which re-tailed the regulation of elder family and group homes, along with assisted living programs; and the enactment of 2003 Acts Chapter 165, relating to adult day services.

COMMENTARY: Initial committee review occurred in August, 2003, before the rules were even drafted. An initial notice was published in December, 2003. At that time discussion centered around the special needs of persons suffering from dementia and the need for special waivers to allow programs to meet those needs. In response to these concerns the legislature has in 2004 enacted House File 2514; that legislation was vetoed by the Governor. It would have required the Department of Inspections and Appeals, in cooperation with Department of Elder Affairs and the affected industry, to institute a pilot project for dementia-specific alternative living.

The level of controversy has reduced considerably from the initial proposal. Committee members discussed the process for the involuntary transfer of residents who no longer could be properly care for in an assisted living setting; members were concerned that a process needed to be in place which allows some independent review of a transfer decision. Department representatives assured the committee that due process protections were in place, subject to final review by the Department of Elder Affairs, and appeal into the court system.

ACTION: NO ACTION, no additional review is anticipated.

ENVIRONMENTAL PROTECTION COMMISSION, Cold water streams, 4/14/04 IAB, ARC 3282B, NOTICE.

BACKGROUND: Water quality rules have a protection classification for "Class B(CW) Cold Water". This classification protects the temperature levels in designated streams for the benefit of trout and other fauna that thrive in colder waters. These streams are located in North East Iowa.

COMMENTARY: The EPC first proposes a specific protocol setting out characteristic that define and identify a cold water stream, thus allowing more uniform determinations; this proposal was met with general approval by the committee. The notice would also add a second cold water designation protecting smaller cold water streams that feed those currently protected streams; this new classification could add over 20 new streams. This classification would provide protections to smaller streams that, while they do not support trout, do support other organisms that provide food for trout and contribute water flow into the trout stream.

Committee members were very concerned about the impact of this second part of the proposal; members reviewed an estimate by the Legislative Services Agency noting a potential impact on three or possibly four communities that could reach \$750,000 to \$1,000,000 per community. Department representatives responded this estimate was a worst case scenario and suggested the cost would actually be significantly less. Communities likely to be effected include Garnavillo, Waukon and West Union. A representative from the Iowa League of Cities commented this provision impacts a number of small Iowa communities that cannot afford a significant cost impact; the representative also suggested that a number of other communities could also be impacted by the designation.

Department representatives did not identify a specific threat that necessitated these proposals, but did state that the rules would help trout streams to reach their full potential by giving some protections to smaller feeder streams that contribute cold water and food to support a trout population. The representatives noted that rulemaking in this area is a two-part process. Once the protocol itself is in rule, each stream identified according to the standard must itself be adopted through the rulemaking process; thus any person impacted by a particular designation would have ample opportunity to protest that action.

ACTION: No action, additional review likely when the rule is adopted in final form.

INSURANCE DIVISION, Unfair trade practices: diminished value determinations, 4/14/04 IAB, ARC 3306B, EMERGENCY.

BACKGROUND: The initial rule, published in July 2003, required insurers to consider the effect of "diminished value" on the market value of a damaged vehicle. The requirement was based on an Iowa Supreme Court ruling. Under this concept an insurer would have not only an obligation to repair a vehicle to its pre-accident condition, the insurer would also be obliged to compensate the vehicle owner for the reduced value of a repaired vehicle.

COMMENTARY: This rule was delayed by the committee, pending legislative review. Committee members were unsure whether it was necessary or even desirable to establish a general policy based on a single judicial holding. Legislators contemplated a rescission of this rule until the division agreed to rescind the rule, on an emergency basis, pending further study.

ACTION: NO ACTION.

IOWA FINANCE AUTHORITY, Title guarantee program, 4/28/04 IAB, ARC 3322B, NOTICE.

BACKGROUND: The Title guarantee program is Iowa's answer to the demand for title insurance for mortgages sold nationally on the secondary mortgage market.

COMMENTARY: These rules first appeared in 1986; this is the first complete update in fifteen years. The revision adds a large amount of detail to the rather brief rules that are currently in place. They have been reviewed and approved by the property section of the bar association and other concerned interests. Any attorney in good standing, who maintains errors and omissions liability coverage, is eligible to participate in the program. The cost of a guarantee is set in an amount sufficient to permit the program to operate on a self-sustaining basis. The guarantees may be issued either by the program itself or by a participating attorney. To provide a guarantee an abstract of title must be brought up to date and a title opinion issued.

ACTION: NO ACTION.

IOWA LAW ENFORCEMENT ACADEMY, Reserve officer training standards, 4/28/04 IAB, ARC 3314B, FILED.

BACKGROUND: Reserve officers are volunteer sworn peace officers used to supplement regular peace officers. Current training requirements for reserve officers cover only weapons certification. This is now expanded to include personal selection standards.

COMMENTARY: These expanded requirements were requested by the reserve officers themselves; the rules have been reviewed by the law enforcement community and have been revised in response to the public comment. For example, physical fitness standards have been replaced by physical examinations. The new requirements are basically personal standards, similar to requirements imposed by most licensing boards---with the addition of hearing and vision requirements. Attending the academy itself is not required.

ACTION: NO ACTION.